

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |
| |) | |
| ALLTEL Communications, Inc. |) | |
| Petition for Consent to Redefine Rural |) | |
| Telephone Company Service Areas |) | |
| in Michigan |) | |

COMMENTS OF TDS TELECOMMUNICATIONS CORP.

TDS Telecommunications Corp. (“TDS Telecom”), parent company of rural local exchange carriers (“RLECs”) Wolverine Telephone Company (“Wolverine”) and Shiawassee Telephone Company (“Shiawassee”) (collectively, the “TDS RLECs”), submits these comments in response to the Supplement to the Petition of ALLTEL Communications, Inc. for Consent to Redefine Rural Telephone Company Service Areas in Michigan, including those of the TDS RLECs.¹ These comments respond to the Commission’s invitation to identify new information or arguments related to the Commission’s *Virginia Cellular*² and *Highland Cellular*³ decisions

¹ In September 2003, the Michigan Public Service Commission (MPSC) granted ALLTEL ETC status for certain portions of rural telephone company study areas it serves in the state. ALLTEL then petitioned the Commission for approval of the MPSC redefinition decisions. *Federal-State Joint Board on Universal Service, Petition of ALLTEL Communications, Inc. For Consent to Redefine the Service Areas of Rural Telephone Companies in the State of Michigan*, CC Docket No. 96-45 (Dec. 17, 2003) (“Petition”). ALLTEL filed the Supplement to the Petition on May 14, 2004. *See Federal-State Joint Board on Universal Service, ALLTEL Communications, Inc., Petition for Consent to Redefine Rural Telephone Company Service Areas in Michigan*, CC Docket No. 96-45, DA No. 04-686, Supplement (May 14, 2004) (“Supplement”).

² Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

³ Memorandum Opinion and Order, *Federal-State Joint Board on Universal Service Highland Cellular, Inc Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, FCC 04-37 (rel. April 12, 2004) (“*Highland Cellular*”).

that are relevant to the pending Petition.⁴ We also identify a relevant issue raised by the recently-released Recommended Decision of the Federal-State Joint Board on Universal Service (“Joint Board”).⁵

Specifically, TDS Telecom urges the Commission to deny the Petition with respect to the TDS RLECs on the ground that, under the standards set forth in *Virginia Cellular* and *Highland Cellular*, redefining the TDS RLECs’ service area as proposed will allow ALLTEL to “cream-skim” and could undermine the TDS RLECs’ ability to serve their study areas. Alternatively, the Commission should delay consideration of the Petition until after the Commission has resolved issues raised in the pending Recommended Decision relating to per-line support mechanisms for designating eligible telecommunications carriers (“ETCs”).

I. THE PUBLIC INTEREST WOULD NOT BE SERVED BY GRANTING THE SERVICE AREA REDEFINITION REQUESTED IN THE PETITION

In *Virginia Cellular* and *Highland Cellular*, the Commission affirmed that decisions concerning redefinition of a rural telephone company’s service area to allow a competitive ETC to serve only a portion of that area should continue to take into account the concerns of the Joint Board in (1) minimizing creamskimming; (2) recognizing that the Telecommunications Act of 1996 places rural telephone companies on a different competitive footing than other local exchange carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than the study area

⁴ See Public Notice, *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA 04-999 (rel. Apr. 12, 2004) (“Public Notice”).

⁵ Recommended Decision, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission’s Rules Relating to High-Cost Universal Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 04J-1 (rel. Feb. 27, 2004) (“Recommended Decision”).

level.⁶ The Commission also provided additional guidance concerning the circumstances in which creamskimming concerns are implicated.

To evaluate whether creamskimming concerns were implicated in a request to designate an ETC in select wire center(s) – and to redefine the RLEC service area – *Virginia Cellular* and *Highland Cellular* looked to the effect, rather than merely the purpose, of the petitioner’s request. That is, contrary to the MPSC Order, which granted ALLTEL’s petition for ETC designation in partial rural service areas and discounted any “creamskimming” concerns because “ALLTEL has not specifically picked the areas in which it will serve, but instead the areas were defined in the FCC’s wireless licensing process,”⁷ *Virginia Cellular* and *Highland Cellular* examined whether the proposed service area could have a creamskimming effect.

The Commission made clear that the mere fact that the area in which a petitioner seeks ETC designation is determined by the petitioner’s wireless service area does not by itself support a conclusion that the public interest would be served by granting ETC designation in the requested partial service area.⁸ Instead, the Commission examined both the population density of the wire center(s) in which the petitioner sought to be designated as an ETC and the disparity between the density of the designated wire center(s) and the other wire centers in the RLEC’s

⁶ See *Virginia Cellular* ¶ 41; *Highland Cellular* ¶ 38. “Rural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company’s study area.” *Virginia Cellular* ¶ 32; *Highland Cellular* ¶ 26.

⁷ *In re application of ALLTEL Communications, Inc., for designation as an eligible telecommunications carrier pursuant to Section 214(e)(2) of the Communications Act of 1934* at 15, Case No. U-13765 (Mich. PSC Sept. 11, 2003).

⁸ In *Highland Cellular*, the Commission expressly noted that even where a competitive carrier is simply seeking ETC designation in its own licensed service area, and thus is not “deliberately seeking to enter only certain portions of [rural telephone] companies’ study areas in order to creamskim,” “granting a carrier ETC designation for only its licensed portion of the rural study may have the same effect on the ILEC as rural creamskimming” and would be inconsistent with the public interest. *Highland Cellular* ¶¶ 26-27.

service area.⁹ The Commission relied on this comparative density information to determine whether designating the petitioner as an ETC in the specified wire center(s) – and redefining the RLEC’s service area to permit such designation – could potentially undermine the RLEC’s ability to serve its entire study area.¹⁰ In *Highland Cellular*, the Commission further noted that where the RLEC’s “study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the incumbent and competitor differ substantially.”¹¹ Accordingly, the Commission “reject[ed] arguments that incumbents can, in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent’s study area.”¹²

Before applying the *Virginia Cellular* and *Highland Cellular* “creamskimming” tests to the Petition, TDS Telecom suggests one slight modification to ensure that the tests reflect more accurately the cost characteristics of the relevant wire centers. Specifically, we respectfully suggest that the Commission examine *access line density* – calculated by dividing the number of access lines served by a wire center by the square mileage of the area served – rather than population density when evaluating the potential creamskimming effect of a partial ETC designation and related service area redefinition. In the experience of TDS Telecom, access line density reflects much more accurately the costs of serving a wire center than the density of the population living in that area.

⁹ *Virginia Cellular* ¶ 35; *Highland Cellular* ¶¶ 29-31.

¹⁰ *Virginia Cellular* ¶ 35; *Highland Cellular* ¶ 32.

¹¹ *Highland Cellular* ¶ 32.

¹² *Id.*

Applying this modified test to the Petition, the potential creamskimming effect is apparent. The access line densities of the TDS RLEC wire centers are shown in the following table. The centers in which ALLTEL sought ETC designation are indicated in bold:

| TDS RLEC | Wire Center | Access Line Density (lines/sq. mile) |
|------------|-----------------|-----------------------------------------|
| Wolverine | Sanford | 71.923 |
| | Millington | 43.580 |
| | Fostoria | 32.874 |
| | Munger | 17.753 |
| | | |
| Shiawassee | Shaftsbury | 62.761 |
| | Perry | 62.551 |
| | Bell Oak | 20.866 |

The creamskimming potential created by the proposed partial ETC designation and service area redefinition in the Wolverine service area is similar to that identified by the Commission with respect to the Verizon South area sought to be partially served in *Highland Cellular*. As in *Highland Cellular*, although ALLTEL includes one high-cost wire center in the wire centers it proposes to serve, a high percentage of ALLTEL’s “potential customers in [Wolverine’s] study area would be located in the . . . highest-density, and thus presumably lowest-cost, wire center[] in [Wolverine’s] study area.”¹³ That is, some 83 percent of ALLTEL’s potential customers in Wolverine’s study area would be in the highest-density wire center while only 17 percent of the potential customers would be located in the highest-cost wire center. On similar facts, the Commission found that designating Highland Cellular as an ETC in the requested wire centers “potentially could undermine [the rural incumbent’s] ability to serve its entire study area.”

In Shiawassee, although ALLTEL seeks to serve the lowest density wire center (in which significant universal service funding is available because Shiawassee has

¹³ *Highland Cellular* ¶ 31.

disaggregated to the wire center level), for reasons described below with respect to variability in population density across the wire center, there is still some potential for creamskimming within the Bell Oak wire center.

Although Shiawassee has disaggregated universal service support to the wire center (and Wolverine could choose to do so), the Commission has acknowledged that disaggregation cannot always protect against the effects of creamskimming, particularly where the incumbent's wire centers exhibit highly variable population densities and therefore highly variable cost characteristics.¹⁴ These characteristics are present in the wire centers ALLTEL seeks to serve. As a proxy to demonstrate the variation in access line density across its wire centers, TDS Telecom calculated the access line density in each Census Block Group ("CBG") within the wire centers in which ALLTEL has been designated as an ETC.¹⁵ The densities of the CBGs do not reflect exactly the densities within the wire centers because the boundaries of the CBGs do not correspond precisely with wire center boundaries (*i.e.*, part of a CBG may be in one wire center while another part is in another wire center). Nonetheless, we believe that the access line densities of the CBGs that are partially or entirely within the relevant TDS RLEC wire centers can serve as a useful indicator of how population and access lines are grouped within the wire centers.

An examination of the access line densities in the CBGs within the TDS RLEC wire centers in which ALLTEL has been designated an ETC shows significant variation in access line density across all three wire centers. For example, there are seven CBGs in Wolverine's Sanford wire center, with access line densities ranging from as high as 224.3

¹⁴ *Highland Cellular* ¶ 32.

¹⁵ Census Block Groups are established by the U.S. Census Bureau for purposes of compiling and analyzing census information. The CBG figures used here are from the 2002 Census.

lines/sq. mile to as low as 31 lines/sq. mile. Of the three CBGs in the Munger wire center, the access line densities range from 29.6 lines/sq. mile to 18.3 lines/sq. mile. In Shiawassee's Bell Oak wire center, there are four CBGs. Two CBGs have areas between 10 and 30 square miles and access line densities of about 20 lines/square mile. The other two CBGs are less than one square mile each (0.3 and 0.8 square mile) and have only six and 14 total access lines, respectively. As these figures show, both the Wolverine and Shiawassee "study area[s] include[] wire centers with highly variable population densities, and therefore highly variable cost characteristics,"¹⁶ making disaggregation less viable for reducing creamskimming opportunities.¹⁷

In sum, the redefinition of the TDS RLEC service areas sought in the Petition and Supplement would be inconsistent with the public interest under *Virginia Cellular* and *Highland Cellular* because the redefinition would implicate creamskimming concerns and potentially undermine the TDS RLECs' ability to serve their entire study areas. Accordingly, the Petition must be denied and referred to the MPSC for reconsideration of the underlying decision to designate ALLTEL as an ETC in only portions of the TDS RLECs' study areas.

¹⁶ *Highland Cellular* ¶ 32.

¹⁷ Even where the wire centers within a study area do not exhibit highly variable population densities, disaggregation of universal service support does not fully protect against the potential harm caused to the incumbent by creamskimming. Although disaggregation and targeting of universal service support can ensure that rural telephone companies continue to recover the direct costs of serving their most high-cost wire centers (which are not subject to competition), certain cross-wire-center network and overhead costs may not be fully reflected in disaggregation plans. If universal service payments for lower-cost areas subject to competition eventually decline, those cross-wire-center costs (which will persist as the rural incumbent continues to maintain its network as the "carrier of last resort" throughout its service area) may not be fully recovered. Thus, disaggregation alone does not ensure that the public interest will be served by the designation of ALLTEL as a competitive ETC in the specified wire centers in the TDS RLEC territories.

II. THE COMMISSION SHOULD NOT CONSIDER THE PROPOSED SERVICE AREA REDEFINITION UNTIL AFTER THE COMMISSION HAS RESOLVED THE PER-LINE SUPPORT ISSUES RAISED IN THE RECOMMENDED DECISION

The Commission is currently evaluating a number of proposals to revise the rules relating to High-Cost universal service support and the criteria and procedures for designating ETCs eligible to receive that support.¹⁸ One of the issues identified in the Recommended Decision as meriting further consideration by the Commission is the potential use of specific benchmarks, based on per-line support, to guide state and federal regulators deciding whether the public interest would be served by designating one or more competitive ETCs in a rural service area.¹⁹ As the Joint Board noted, per-line support can serve as a useful marker for determining whether the line density, population density, distance between wire centers, loop lengths and levels of investment in a particular rural service area can appropriately support the entry of one or more competitive carriers.²⁰ Although the Joint Board was unable to reach a consensus to recommend specific per-line support benchmarks, the Recommended Decision does recognize

¹⁸ The Joint Board issued a request for comments on these issues in February 2003. Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on Certain of The Commission's Rules Relating to High-Cost Universal Service Support and The ETC Designation Process*, CC Docket No. 96-45, FCC 03J-1 (rel. Feb. 7, 2003) ("*High Cost/ETC Notice*"). Commenters identified a number of factors the Commission should consider in determining whether to grant ETC designation, especially in rural service areas. The Joint Board has issued a Recommended Decision, which is now before the Commission.

¹⁹ Recommended Decision ¶ 44.

²⁰ *Id.* ¶ 43. The Joint Board concluded that "[i]f the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund. Moreover, if the Commission were to cap per-line support upon entry of a competitive ETC and impose a primary-connection restriction, as discussed [in the Recommended Decision], designating an excessive number of ETCs could dilute the amount of support available to each ETC to the point that each carrier's ability to provide universal service might be jeopardized. *Id.*

the value of adopting per-line support benchmarks and recommends that the Commission solicit comment on whether such benchmarks merit consideration by the Commission.²¹

Per-line support benchmarks could be especially relevant where a potential ETC seeks to redefine a RLEC's service area to serve only select wire centers within the RLEC's service area. By subdividing a rural service area and further reducing the already small subscriber base for purposes of universal service funding and competitive ETC designation, a competitive entrant could further reduce the economies of scale present in rural territories and create smaller service areas that are even less capable of supporting competitive entry than a rural company's full service area. Diluting support to these areas, on a piecemeal basis throughout the rural telephone company's service area, could be even more damaging to the ETCs' ability to provide universal service throughout the rural area.

Because of the potential harm to universal service goals – as recognized by the Joint Board – that could result from designating multiple ETCs in small, wire-center-level rural service areas with high per-line support, the Commission should decline to approve any service area redefinitions necessitated by ETC designations in partial rural service areas until after the Commission has addressed the possibility of adopting specific per-line support benchmarks to guide decisionmakers considering designating competitive ETCs in rural service areas (and partial rural service areas specifically).

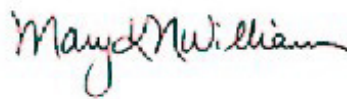
²¹ *Id.*

CONCLUSION

For the foregoing reasons, the Commission should reject the Petition and Supplement and refer them to the MPSC for reconsideration of its decisions to redefine the TDS RLEC service areas and designate ALLTEL as a competitive ETC in select wire centers. Alternatively, the Commission should delay consideration of the Petition until after the Commission has resolved the issues related to per-line support raised in the pending Joint Board Recommended Decision.

Respectfully submitted,

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